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TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

FEB 29 2012

Uniform Issue List: 408.03-00

T:EP:RA:T2

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Legend:

Taxpayer A = XXXXXXXXXXXX
Financial Institution M = XXXXXXXXXXXX
XXXXXXXXXXXX
Financial Advisor T = XXXXXXXXXXXX
IRA X = XXXXXXXXXXXX
XXXXXXXXXXXX
Account G = XXXXXXXXXXXX
Amount S = XXXXXXXXXXXX
Date 1 = XXXXXXXXXXXX

Dear XXXXXXXXXXXX:

This is in response to your letter dated April 28, 2011, submitted on your behalf by your authorized representative, in which you requested a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of your ruling request.

Taxpayer A age **, represents that he erroneously received a distribution from IRA X held by Financial Institution M totaling Amount S. Taxpayer A asserts that his failure to accomplish a rollover of Amount S within the 60-day period

prescribed by section 408(d)(3) of the Code was due to the fact that he was unaware that Amount S had been distributed from IRA X. He represents that due to an error by an employee of Financial Institution M, Amount S was distributed from IRA X instead of Account G. Taxpayer A represents that Amount S remains in Account G.

Taxpayer A is the owner of IRA X and Account G at Financial Institution M. In mid 2008, Taxpayer A contacted Financial Advisor T at Financial Institution M and indicated that he would like to withdraw Amount S from Account G. On Date 1, Financial Advisor T improperly processed the withdrawal request and Amount S was withdrawn from IRA X instead of Account G. Documentation from Individual A, Senior Counsel at Financial Institution M admits that Financial Advisor T erred in processing the distribution from IRA X instead of Account G as requested by Taxpayer A.

Taxpayer A became aware of the improper distribution in January of 2009 when he received the Form 1099-R for 2008 from the Internal Revenue Service (the "Service"). Upon learning of the improper distribution, Taxpayer A discussed the situation with Financial Advisor T and other employees at Financial Institution M. They determined that the funds could not be rolled back into an IRA account because the sixty day rollover period had passed.

Based upon the above facts and representations, Taxpayer A now requests that the Service waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount S.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines and provides the rules applicable to IRA rollovers. Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual to whose benefit the account is maintained if:

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which he receives the payment or distribution; or,
- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3) of the Code).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under Section 408(d)(3)(I) of the Code.

Revenue Procedure 2003-16, 2003-4 I.R.B. 359, provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to sections 408(d)(3)(I) and 402(c)(3)(B) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution, (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country, or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and, (4) the time elapsed since the distribution occurred.

The information and documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish the rollover within the 60-day period prescribed by Section 408(d)(3) of the Code was due to the fact that he was unaware that Amount S had been distributed from IRA X. The information and documentation submitted by Taxpayer A are also consistent with his representation that due to an error by an employee of Financial Institution M, Amount S was distributed from IRA X instead of Account G.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount S from IRA X. Taxpayer A is granted a period of 60 days from the issuance of this ruling to contribute Amount S into a rollover IRA. Provided all other requirements of section 408(d)(3) of the Code, except for the 60-day rollover

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requirement, are met with respect to such contribution, the contribution will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code, made applicable to IRAs pursuant to section 408(a)(6) of the Code.

No opinion expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations that may be applicable hereto.

This ruling is directed solely to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative. If you have any questions regarding this ruling, please contact XXXXXXXXXXX (ID # *****) at (**) **-****. Please address all correspondence to XXXXXXXXXXX.

Sincerely yours,



Donzell H. Littlejohn, Manager
Employee Plans Technical Group 2

Enclosures:

Notice of Intention to Disclose
Copy of deleted ruling letter

CC: XXXXXXXXXXX